LOH SING CHER

v.

TAN AH CHOW & ANOR.

HIGH COURT, SINGAPORE
LP THEAN J
[SUIT NO. 6713 OF 1983]
17 MAY 1990

CONTRACT: *Agreement for the sale and purchase of shares - The parties to the contract - Whether the plaintiff was the proper party to institute and maintain action - Determination of the price of the shares to be sold - Failure of defendant to pay balance of purchase price - Death of defendant during course of trial - Substituted by administrator of estate - Beneficial ownership.*

The plaintiff agreed to sell and Ng Chin Leong (NCL) agreed to purchase 260,000 shares @ $1.85 a share of a company. On completion of the sale, which took place on or about 14 January 1982, the plaintiff delivered to NCL certificates and blank transfers of the said shares and NCL paid the plaintiff a sum of $260,000 and promised to pay the balance sum of $221,000 at a later date; which NCL failed to do. The plaintiff owned 104,000 shares; the rest were held by his brothers and sister-in-law as nominees.

On 16 January 1988 however, NCL passed away and upon application by the plaintiff, the administrator of the estate of NCL was substituted as defendant in this action.

The issues raised before the Court were

(i) who were the parties to the agreement for the sale of the 260,000 shares?

(ii) what was the price at which the shares were sold?

(iii) whether the plaintiff was the proper party to institute and maintain this action.

Held:

[1] It is clear that the sale and purchase of the 260,000 shares were made between the plaintiff and NCL. They were the only parties to the transaction. There was no evidence to suggest that the sale of the shares was made between the then registered shareholders and the transferees of the shares respectively. There was no merit in the defendant raising this issue as a defence.

[2] The plaintiff had proved on a balance of probabilities that the price at which he sold the shares to NCL was $1.85 per share, and that he had received only $1 per share, leaving the balance of 85 cents per share unpaid.

[3] In this case the plaintiff was the one who entered into the contract with NCL for the sale of the shares, it was not a contract made by the legal owners of the shares as agents or trustees for him. None of the legal owners were parties to the contract he made with NCL.

[4] The plaintiff's obligation *vis-a-vis* NCL in relation to the sale was to deliver, on completion, certificates and properly executed transfers of the shares, which he did. In these circumstances, there was no question of the plaintiff joining any of the legal owners of the shares as a party in this action.

[Judgment for the plaintiff.]

Case referred to:
Harmer v. Armstrong & Ors. [1983] All ER 778

For the plaintiff - Cheong Yuen Hee (Belinda Ang with him)
For the defendants - B. Ganesh (Chakraborty Trinel with him)

JUDGMENT

LP Thean J:

On 29 December 1983 the plaintiff, Loh Sing Cher, commenced this action against the defendant, Ng Ching Leong, claiming the sum of $221,000 representing the balance of the purchase price of 260,000 shares of $1 each in Lian Bee Credit Pte. Ltd. ("Lian Bee") which he, the plaintiff, had sold to Ng Ching Leong ("NCL"). The plaintiff claimed that at all material times he was the beneficial owner of the 260,000 shares, and in December 1981 he agreed to sell to NCL the shares at the price of $1.85 per share. On completion of the sale, which took place on or about 14 January 1982, the plaintiff delivered to NCL certificates and blank transfers of the 260,000 shares, and NCL paid to him $260,000 (at $1 per share) and promised to pay the balance sum of $221,000 at a later date; this sum, however, NCL failed or refused to pay subsequently.

The plaintiff's claim was resisted, and by his defence NCL averred that the sale of the 260,000 shares was between the then registered holders of diverse lots of shares comprising the 260,000 shares and the subsequent registered holders of those lots of shares; that the purchase price for all the 260,000 shares was $1 per share and hence the total purchase price "had been fully paid to the respective sellers by the respective purchasers", and that the plaintiff was not the proper party to institute and maintain the action.

Unfortunately, while this action was in progress, NCL on 16 January 1988 passed away. Subsequently, on 11 November 1988, upon application by the plaintiff, the abovenamed Tan Ah Chow and Ng Bee Huat as administrators of the estate of NCL deceased were substituted as the defendants in this action.

Eventually, the action came on for trial, and at the conclusion of the hearing on 29 January 1990 I found that the plaintiff had established his claim and gave judgment to him in the sum of $221,000 with interest and costs.

On the basis of the pleadings, the issues raised before me were as follows: (i) who were the parties to the agreement for the sale of the 260,000 shares? (ii) what was the price at which the shares were sold? and (iii) whether the plaintiff was the proper party to institute and maintain this action. The first two issues are essentially questions of fact and the last issue is one of law and also turns substantially on the facts established in the first issue.

I now turn to the evidence adduced before me. The plaintiff testified that Lian Bee was formed in 1969 and he and NCL were founders of the company. At the first board meeting, NCL proposed to have 4 to 5 directors on his side and the plaintiff therefore on his side proposed his brothers to be directors of the company; hence, some of his shares were allotted to his brothers. He owned altogether 260,000 shares; of these, 104,000 shares were held by him and the balance of 156,000 shares were held as follows:

(i) 65,000 shares by his brother, Loh Sze Hup,

(ii) 65,000 shares by another brother, Low Sim Bock, and

(iii) 26,000 shares by his sister-in-law, Lim Gek Kim.

These 156,000 shares were held by his brothers and sister-in-law as nominees and they belonged to him.

The plaintiff said that in 1980 Lian Bee was not doing well and NCL proposed to split: either all the shares should be transferred to and held by him, NCL, or all the shares be transferred to and held by the plaintiff. The plaintiff's response was that since NCL had been running Lian Bee, whilst the plaintiff himself had been involved in his own business, he would sell his shares to NCL. NCL accepted the offer, and they negotiated on the price of the shares. The discussions and negotiations took place in or about October or November 1981. The plaintiff said that the shares of Lian Bee were worth about $1.85 per share. At the time of negotiation they had the audited balance sheet and profit and loss accounts of the company and the valuation report of property known as Nos. 10/A/B, 12/A/B, 14/A/B and 16/A/B, Lorong 19, Geylang, which was owned by a company, Lian Holding Pte. Ltd., in which Lian Bee held 25% of the shares. There was also produced to the plaintiff by NCL a trial balance of Lian Bee as at 15 November 1981. On the basis of these documents they negotiated and agreed on a price of $1.85 per share. The negotiation was held only between him and NCL. NCL subsequently handed to him blank transfers for signing by him and his nominees. He distributed the transfer to his brothers and sister-in-law for signing, and they were all duly signed. At a meeting in January 1982 he handed to NCL the transfers duly signed together with the share certificates. The transfers were in blank, that is, they did not contain the type written words: the names of the transferors and transferees, the number of shares transferred and the consideration of the shares. NCL gave him cheques for various sums totalling $260,000 and proposed to pay the balance of 85 cents per share, that is the balance of $221,000, at a later date. The plaintiff agreed to accept this part-payment and to payment of the balance at a later date. The reason why he was so agreeable was that some years ago, in 1977, he borrowed a sum of $100,000 from NCL and repaid NCL the amount only about 1 year later without any interest. While the loan was outstanding NCL never pressed him for repayment of the loan or payment of any interest.

The plaintiff said that some time after the sale of the shares he asked NCL for payment, but the latter told him that he, NCL, would pay the amount later. However, in July or August 1983, when the plaintiff approached NCL for payment of the balance of the purchase price for the shares, NCL said that the plaintiff's friends and relatives owed Lian Bee moneys amounting to more than $200,000, and he proposed to offset the total amount thereof against the balance sum owed by him to the plaintiff. Thereafter, the plaintiff saw NCL two or three times to discuss the payment, but the latter insisted that the amounts owed by the plaintiff's friends and relatives were his responsibility. Hence, he, the plaintiff, consulted solicitors and instituted this action for recovery of the amount due.

The plaintiff's brothers, Loh Sze Hup and Low Sim Bock, and his sister-in-law, Lim Gek Kim, were called, and they all testified that they did not own the shares they held in Lian Bee and that they each held the shares as nominees for the plaintiff, the share certificates were kept by the plaintiff, and none of them had possession thereof. All of them also said that the transfers for the shares were given to them by the plaintiff to be signed, and they signed and returned them to him. When they signed the transfers all the type written words were not there. In other words, they signed the transfers in blank. Nor did they receive any moneys for the shares which they had transferred.

The defendants called one Ng Toh Seng ("Ng") as a witness. Ng is not related in any way to NCL but is only a friend of the family. He held shares in Lian Bee; 30,000 shares were allotted to him soon after the incorporation of the company. He was and is a director of Lian

Bee. He said that at the meeting on 14 January 1982 the plaintiff handed share certificates and transfer to NCL; it was a shareholders' meeting. The shares were transferred to various transferees. There was no discussion as to who were to buy how many shares. The number of shares to be transferred to each transferee was decided by NCL. He did not know how many shares were to be transferred and by whom the shares were to be transferred. So far as he was concerned, 85,000 shares were allocated to him. The accountant of the company, Lee Onn Hwee, gave him the transfers to sign and pointed out where he had to sign, and he signed those transfers. He did not pay any money for the shares then. He paid for them 2 or 3 months later to NCL; he paid $85,000 and paid it by three instalments on three separate occasions.

Ng further said that prior to 14 January 1982 he had a discussion with NCL. Five of them were present: he, NCL, Ng Sing Heng, Goh Say Chong and Tan Boon Lay. They were shareholders of Lian Bee and decided to offer their shares to the plaintiff at $1 per share. The offer was made through NCL. The plaintiff turned down the offer and counter-offered to sell his shares at $1 per share. NCL alone discussed and negotiated with the plaintiff and none of the others were present. Ng was told of these negotiations by NCL. Ng's evidence on this point was therefore purely hearsay; it is only evidence of what he heard from NCL and not evidence of the truth of what he heard.

The defendants next called Ng Bee Keong as a witness. He is director of Ng Ching Leong Pte. Ltd and a son of NCL. He was called merely to produce a payment voucher of that company which was admitted (D3). The voucher showed that a sum of $85,000 was paid to the plaintiff for "Purchase of 85,000 shares in Lian Bee Credit Co. (Pte.) Ltd." Ng Bee Keong did not know anything regarding the sale and purchase of the shares from the plaintiff and could not give any evidence in relation to such transaction.

I now return to the issues raised before me. So far as the first issue is concerned, on the evidence before me, it is clear that the sale and purchase of the 260,000 shares in Lian Bee in December 1981 were made between the plaintiff and NCL. They were the only parties to the transaction. There is not a shred of evidence to suggest that the sales of these shares were made between the then registered shareholders and the transferees of the shares respectively. Quite frankly, I do not see any merit in the defendants raising this issue as a defence.

The second issue, namely, at what price the plaintiff sold the shares to NCL, is really the main issue in the dispute. As the evidence stood, the only direct evidence on the point was that of the plaintiff. As the negotiation was conducted solely between the plaintiff and NCL, and NCL had passed away, the defendants could adduce no direct evidence, or for that matter, no evidence to refuse the plaintiff's evidence. Counsel for the defendants sought to impeach his credit, and he was cross-examined at great length. However, the plaintiff did not strike me as evasive or untruthful; there are matters which obviously owing to the long lapse of time he could not testify correctly or accurately; there are minor discrepancies in his evidence, but nothing of a serious character or such as to cast serious doubts on the veracity of his evidence. Counsel also sought to demonstrate (i) the contradictions between his evidence and the pleadings and (ii) the inherent improbabilities of what the plaintiff said. In both he failed. I can find no material contradictions between what the plaintiff said in evidence and what was pleaded. There are some slight discrepancies but they are in no way material. I also do not find anything inherently improbable in what the plaintiff said. I think what he said is highly probable. There was material before me to show the basis on which the price of $1.85 was arrived at; there is no reason why the plaintiff should sell his shares at $1 per

share when the documents before him at the time showed that the shares were worth more than that. This action was brought in December 1983, long before NCL passed away. NCL during his lifetime had never denied that the shares were worth more than $1 per share in 1981 or 1982. The plaintiff's reason for agreeing to the payment of the balance of 85 cents per share at a later date is also plausible. Counsel for the defendants relied on D3, the payment voucher of Ng Ching Leong Pte. Ltd. That piece of paper was signed by the plaintiff and has the sum of $85,000 and the following words: "Purchase of 85,000 shares in Lian Bee Credit Co. (Pte.) Ltd." written on it. These words and the sum of $85,000 are quite equivocal and provide no cogent evidence that the plaintiff had agreed to sell the shares at $1 per share. In my opinion, that document existing by itself is not sufficient to refute or cast any doubt on the evidence of the plaintiff. After considering all the evidence, I came to the conclusion that the plaintiff had proved on a balance of probabilities that the price at which he sold the shares to NCL was $1.85 per share, and he had received only $1 per share, leaving the balance of 85 cents per share unpaid.

I now come to the last issue which was raised in the defence, that is the plaintiff was not the proper party to institute and maintain this action. On the evidence, this defence has no merit, and I rejected it. The plaintiff was at all material times the beneficial owner of all the 260,000 shares, and he entered into an oral agreement with NCL to sell the shares to the latter. There was no other party to that agreement. On completion, he duly delivered the certificates and properly executed transfer of all the shares. He had not received the full purchase price for the shares and was clearly entitled to institute and prosecute this action for recovery of the balance of the purchase price. It is true that some of the shares were at the time registered in the names of his brothers and sister-in-law; they held the shares as nominees for him. It matters not, however, whether they so held the shares. Even if they held the shares beneficially, the right of the plaintiff to receive and recover the full purchase price from NCL remains unaffected. The contract for the sale of the shares was made solely between the plaintiff and NCL. The plaintiff's brothers and sister-in-law were not a party thereto; they handed to the plaintiff their certificates and properly executed transfers of their shares and the plaintiff duly delivered these to NCL on completion. Whatever arrangement there was, if any, between the plaintiff and his brothers and sister-in-law does not concern NCL and does not affect the performance of the obligations of the plaintiff and NCL under this contract.

Counsel for the defendants relied on *Harmer v. Armstrong & Ors.* [1983] All ER 778 and submitted that the plaintiff being merely a beneficial owner of the shares cannot sue and maintain the action, unless he joins the legal owners of the shares as parties to this action. Clearly, Counsel misunderstood that case and erred in his submission. In that case, Armstrong, who was desirous of purchasing certain periodicals from a company, enlisted the assistance of the plaintiffs who agreed to contribute towards the purchase price. In consequence, Armstrong entered into a contract under seal with the vendor without mentioning the interest of the plaintiffs. Subsequently, Armstrong entered into a fresh agreement with the vendor purporting to rescind the contract made under seal, and the vendor also purported to sell the periodicals to a new buyer. Thereupon, the plaintiffs brought an action against Armstrong, the vendor and the new buyer. The Court found that Armstrong entered into the contract under seal and took the benefit of that contract as agent and trustee for the plaintiffs and himself. It was held, *inter alia*, that the plaintiffs could sue on that contract, notwithstanding it was under seal and was expressed to be made between Armstrong and the vendor, and enforce the rights thereunder, joining Armstrong as a party. The reason that Armstrong must be joined in such case is obvious. The contract was made by him and in his name; the interest of the plaintiffs had not been mentioned therein.

Clearly, in this case the plaintiff was the one who entered into the contract with NCL for the sale to the latter of the 260,000 shares in Lian Bee; it was not a contract made by the legal owners of the shares as agents and trustees for him. None of the legal owners were parties to the contract he made with NCL. His obligation *vis-a-vis* NCL in relation to the sale was to deliver, on completion, certificates and properly executed transfers of the shares, which he did. In these circumstances, there is no question of the plaintiff joining any of the legal owners of the shares as a party in this action.

Also found at [1990] 2 CLJ 325